Supreme Court, U.S.
FILED

(1) 02 250 AUG 15 2002

OFFICE OF THE CLERK

No. ___

IN THE

Supreme Court of the United States

CLARA CLARK,
Pro se Petitioner,

v.

NORMAN MINETA, *et al.*
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITION FOR A WRIT OF CERTIORARI

DR. CLARA CLARK
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WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

41 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Federal Records Act permits the U. S. Coast Guard Headquarters (CGHQ) to destroy petitioner's complaint records to retaliate against her in violation of Title VII of the Civil Rights Act, while making it look as age retaliation that has no statutory remedy.

2. Whether U. S. C. Title 18, Section 2071 permits the U. S. attorneys for defendants to move for summary judgment, and the lower courts to decide that motion, on the basis of false federal records, to help the CGHQ accomplish its objective in paragraph (1) above.

RULES 29.6 AND 14.1 STATEMENT

The petitioner is Dr. Clara Clark, an employee of the U.S. Coast Guard Headquarters since 1987.

The respondents are:

The Honorable Norman Mineta, Secretary of the U.S. Department of Transportation, the umbrella agency of the Coast Guard.

The Honorable John Ashcroft, Attorney General, U.S. Department of Justice.

The Honorable Cari Domínguez, Chairperson, Equal Employment Opportunity Commission.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
RULES 29.6 AND 14.1 STATEMENT	ii
TABLE OF AUTHORITIES	iv
PETITION FOR A WRIT OF CERTIORARI	1
DECISIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT	3
BACKGROUND	4
REASONS FOR GRANTING THE PETITION	5
I. THE MOTION FOR SUMMARY JUDGMENT BY DEFENDANTS' ATTORNEYS AND THE DECISIONS BY THE LOWER COURTS ARE ILLEGAL	5
II. THE U.S. COAST GUARD HEADQUARTERS ILLEGALLY DESTROYED FEDERAL RECORDS	6
III. BY THEIR ACTIONS, THE JUDGES AND ATTORNEYS BECAME PARTNERS IN CRIME WITH CGHQ PERSONNEL WHO DESTROYED THE FEDERAL RECORDS ABOVE	9
IV. THE QUESTIONS PRESENTED ARE MOST IMPORTANT TO OUR DEMOCRATIC SOCIETY	12
CONCLUSION	12

TABLE OF AUTHORITIES

CASES — Page

Public Citizen v. John Carlin, 2 F. Supp. 2d. 1 (D.D.C. 1997) 8, 10

Public Citizen v. John Carlin, 184 F.3d 900 (D.C. Cir. 1999) 8, 10

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Age Discrimination in Employment Act of 1967, 29 U.S.C.A. § 621 *et seq.* ..... i, 3, 5, 11

The Federal Records Act, 44 U. S. C. § 2101-18, 2901-09, 3101-07, 3301-24 ..... i, 3, 10

The Rehabilitation Act, 29 U.S.C.A. §§ 706, 791-794 ..... 3, 5, 6

Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e *et seq.* ..... i, 4, 6, 7, 10

U.S.C. Title 18, Section 2071 ..... i, 2, 6, 9, 11

OTHER AUTHORITIES

Stern, Robert, et al, (1993), *Supreme Court Practice*, 7th ed., Washington, DC: The Bureau of Nat'l Affairs, Inc. 2

Government Accounting Office (GAO) report GAO/GGD-99-94 National Archives. Preserving Electronic Records in an Era of Rapidly Changing Technology, July 1999 10

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PETITION FOR A WRIT OF CERTIORARI

Dr. Clara Clark, *pro se* petitioner, respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the District of Columbia Circuit in this case.

DECISIONS BELOW

The decision of the Court of Appeals was to dismiss CA 02-5155 stating that the District Court's decision was not final [1] and the decision of the District Court for the District of Columbia was to deny defendants' motion for summary judgment [2] in CA 95-1683 EGS. Petitioner will show that, on

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[1] App. A, pp. 1a-2a.

[2] App. B, pp. 3a-4a.

both decisions, the courts purposely overlooked contradictions, which necessarily leave false statements in a federal record, in violation of U.S.C. Title 18, Section 2071.

JURISDICTION

The decision of the Court of Appeals was entered on 10-JUL-00 [3]. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1) where Congress provided that this Court may review cases in the federal courts of appeals by "writ of certiorari granted by a petition of any party to any civil or criminal case, before or after rendition of judgment or decree [4]."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions that are involved in this case are the following:

U.S.C. Title 18, Section 2071:

> This section provides that "(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned no more than five years, or both.
>
> (b) Whoever, having the custody of any such record, proceeding, map, book, document, paper or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years,

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[3] *See* date on App. A, p. 1a.

[4] *Stern et al.*, Chapter 2, § 2.1, p. 39.

or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term 'office' does not include the office held by any person as a retired officer of the Armed Forces of the United States."

The Federal Records Act:

The Federal Records Act (FRA) is a collection of statutes governing the creation, management and disposal of records by federal agencies (see 44 U. S. C. § 2101-18, 2901-09, 3101-07, 3301-24.) The Records Disposal Act of the FRA establishes the exclusive means by which records subject to FRA may be discarded (see *id.* § 3314; see also *id.* § 3301 defining "records".)

Title VII of the Civil Rights Act of 1964:

Title VII, 42 U.S.C.A § 2000e *et seq.* proscribes discrimination in employment because of race, color, religion, sex, and national origin.

The Age Discrimination in Employment Act of 1967:

This Act, 29 U.S.C.A § 621 *et seq.* proscribes discrimination against individuals over age 40.

The Rehabilitation Act:

Coverage of this Act, 29 U.S.C.A. §§ 706, 791-794, is limited to government employers, recipients of federal financial assistance, and federal contractors. This Act prohibits discrimination against individuals with physical or mental handicaps.

STATEMENT

On 10-JUL-02, the court of appeals illegally decided to dismiss plaintiff's appeal by purposely disregarding the contradictions by the district judge. On 22-MAR-02, the district judge decided to deny defendants' motion for summary judgment while illegally disregarding their contradictions. On 17-SEP-01, in opposing summary judgment, plaintiff showed that the series of contradictions in defend-

ants' motion, dated 07-AUG-2001, led to their admitting her claims of Title VII retaliation at the same time that generated a number of false statements in a federal record. Since April 1989, plaintiff has brought charges of illegal discrimination in employment and retaliation on the following basis: (a) Hispanic national origin discrimination, in April 1989, against Ms. Norma Bullock, the then Civil Rights Officer for the U. S. Coast Guard Headquarters; (b) age discrimination in October 1989 (informally settled) on the basis that young coworker Carmen Colón was shown on chart as being promoted over plaintiff, then 49 years old, without competition; (c) age discrimination, in September 1990, for non-promotion where coworker Carmen Colón was the selectee; and, (d) thereafter, for twelve years, Title VII retaliation (based on numeral "a" above) that includes low performance evaluations as well as discrimination on the basis of sex, harassment (assault), sexual harassment and physical handicap. Defendants' intention was to admit plaintiff's claims as age-retaliation (based on numeral "b" above), which provides no statutory remedy. Plaintiff will show that, to teach her a lesson at no cost to them, defendants illegally destroyed her Title VII records. She will also show that the lower courts, by their decisions, became partners in crime with CGHQ.

BACKGROUND

On or about March 1989, in connection with becoming the Hispanic Employment Program Manager for the U. S. Coast Guard Headquarters, plaintiff-appellant complained that Ms. Norma Bullock, the then Civil Rights Officer, did not help her with English-related problems, which were normal for native Spanish speakers like plaintiff. Instead, Ms. Bullock made plaintiff look as a disloyal employee to her supervisors Brad Balch, William Fels and Gregory Cope.

On or about May 1989, on recommendation by her attorney Francine Weiss of Kalijarvi and Chuzi, plaintiff accepted the agency's offer to destroy all memoranda related to her

complaint. Subsequently, EEO counselor Benjamin Bandy and supervisor William Fels destroyed said records.

On or about October 1989, plaintiff informally complained of age discrimination on the basis that young coworker Carmen Colón was shown on chart as being promoted over plaintiff without competition. On or about September 1990, plaintiff complained of age discrimination for non-promotion and during 1990-1993 she complained of low evaluations. On or about 1993-94, at the hearing of plaintiff's complaints, former EEO counselor Bandy submitted as evidence the records that were supposedly destroyed in enforcement of the false settlement agreement of 16-MAY-89. Thereafter, for eight more years, plaintiff complained of retaliation that included low performance evaluations, and discrimination on the basis of sex, harassment (assault), sexual harassment and physical handicap.

On 17-SEP-01, plaintiff showed that defendants admitted all her claims through a series of contradictions that left a trail of false statements in a federal record. On 22-MAR-02, the district judge disregarded the contradictions by defendants. On 10-MAY-02, plaintiff appealed this decision and on 01-JUN-02 showed cause. On 10-JUL-02, the court of appeals disregarded the contradictions by the district judge.

REASONS FOR GRANTING THE WRIT

I. THE MOTION FOR SUMMARY JUDGMENT BY DEFENDANTS' ATTORNEYS AND THE DECISIONS BY THE LOWER COURTS ARE ILLEGAL.

On 10-JUL-02, the court of appeals reviewed contradictory statements by the district judge [5]. On 23-MAR-02, the district judge decided on the basis of contradictory statements made by defendants' attorneys in their motion for summary

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[5] App. C, p. 5a.

judgment [6] dated 07-AUG-01. Specifically, the district judge said that his decision was/was not final. In turn, the attorneys said that the defendants did/did not discriminate against plaintiff.

However, neither the courts nor the attorneys are permitted to make statements or base their work on contradictions because these necessarily leave false statements in federal records, which are violations of U.S.C. Title 18, section 2071.

II. THE U. S. COAST GUARD HEADQUARTERS ILLEGALLY DESTROYED FEDERAL RECORDS.

Finding for plaintiff-petitioner on the basis of Title VII retaliation is both justified by the evidence and the only way to cure the federal records involved in "I" above (since that would be equivalent to admitting that the statements that deny the discrimination are false). The evidence shows a clear trail in favor of plaintiff since October 1989 with age discrimination by supervisor Gregory Cope publishing a chart that showed coworker Carmen Colón (age 32) as being promoted over plaintiff (age 49) without competition [7], which was informally resolved by Captain Lindak [8]. Followed by age discrimination in the promotion of coworker Carmen Colón (age 32) to a grade 14 supervisory position that plaintiff (age 49) competed for [9]. Followed by discrimination on the basis of physical handicap, sex, harassment (assault) and sexual harassment (hostile environment)[10].

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[6] App. D, pp. 6a-8a.

[7] App. E, p. 9a.

[8] App. F, p. 10a.

[9] App. G. pp. 11a-12a.

[10] App. H, pp. 13a-16a.

This evidence was corroborated by the admissions of defendants' attorneys in their 07-AUG-01 motion for summary judgment, as shown by plaintiff's opposition of 17-SEP-01. They even admitted that it was all intentional as retaliation for the Colón's age-based chart-complaint [11], which has no statutory remedy. As for the Bullock complaint, they claim that it never existed, or if it did, it was not for illegal discrimination [12].

However, the evidence that on or about April 1989, plaintiff complained of Hispanic National Origin discrimination under Title VII of the Civil Rights against Ms. Norma Bullock in connection with the offer of collateral duty as Hispanic Employment Program Manager under Ms. Bullock's supervision, is corroborated by defendants'attorneys [13] and EEO counselor Bandy's testimony at the 1993-94 hearing in response to the question by judge Colby as to what was plaintiff complaining about. In his words: "she [plaintiff] felt that she was being discriminated against because of her race and national origin in a collateral duty assignment as a Hispanic employment manager [14]".

The substance of the complaint, according to Ms. Bullock, was that plaintiff wrote a strongly worded memorandum to her [15]. And, according to plaintiff's deposition, the com-

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[11] "The only reprisals alleged by plaintiff in her EEO complaints were in retaliation for her prior age discrimination", last two lines, p. 8, defendants' memorandum of motion dated 07-AUG-01.

[12] Defendants refer to plaintiff's Title VII complaint as "her [plaintiff] 1989 squabble with Ms. Bullock", line 12, p. 40, defendants' memorandum, motion dated 07-AUG-01.

[13] Defendants acknowledge that in 1989 plaintiff "escalated a dispute between herself and the Coast Guard Headquarters civil rights officer, Ms. Norma Bullock, into a Title VII complaint", last para., p. 38 *id.*

[14] *See* lines 10-13, T. p. 777.

[15] App. I, p. 17a.

plaint agrees in general with the testimony above but is more specific saying in words of substance: "there were no strong words in my memorandum, but even so, it was Ms. Bullock's duty to explain to me how the words from my native Spanish thoughts were strong in English" [16]. Defendants cannot rebut plaintiff's testimony because they destroyed the records and the ones that counselor Bandy submitted at the hearing are bad-faith substitutes.

The proof that CGHQ destroyed plaintiff's complaint documents is in the testimony by EEO counselor Benjamin Bandy at the 1993-94 hearing that, while accompanied by supervisor William Fels in 1989, he destroyed all records relative to the Bullock complaint[17] (per order by Admiral Donnell in compliance with the illegal settlement agreement of 16-MAY-89)[18].

The proof is that counselor Bandy's destruction of the Bullock records was illegal even if he had brought them back immediately, which he did not, per rulings by the very same courts involved in this case. Specifically, in *Public Citizen v. John Carlin,* 184 F.3d 900, 906-907 (D. C. Cir. 1999) on appeal from *Public Citizen v. John Carlin,* 2 F. Supp.2d 1 (D.D.C. 1997), the court of appeals decided that the correct interpretation of the Federal Records Act is that before a federal agency can destroy a record that it needs to conduct business "it must first copy it to a record keeping system". But, former counselor Bandy's briefcase can hardly be considered appropriate storage for the records of the CGHQ. In other words, the CGHQ should have produced the records of the Bullock complaint from its files in a record keeping system or admit that it destroyed them illegally.

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[16] App. J, p. 18a.

[17] App. K, pp. 19a-21a.

[18] Clause No. 2 of the settlement agreement concerned the illegal consideration of destroying the records. *See* App. K, p. 19a.

Then, five years later, at the 1993-94 hearing, former counselor Bandy submitted a set of records claiming that those were a copy of the records that he kept in his possession. Accepting the Bandy documents as genuine government records (as EEOC's administrative judge Arthur Colby did in cooperation with CGHQ's attorneys Andrew Pessin and Steven Poulin, and plaintiff's attorney Francine Weiss)[19] is deceiving and must be punished.

III. BY THEIR ACTIONS, THE JUDGES AND ATTORNEYS BECAME PARTNERS IN CRIME WITH CGHQ PERSONNEL WHO DESTROYED THE FEDERAL RECORDS ABOVE.

The judges, attorneys and CGHQ personnel involved in this case, all committed a criminal offense. They had the knowledge, intention, motive, means and opportunity to do so.

Criminal Acts.

The judges of the court of appeals committed criminal acts when they signed their 10-JUL-02 ruling, that the 22-MAR-02 decision by the district judge was not final, because they authorized both false federal records for posterity in violation of Title 18 *supra* and an illegal order to plaintiff (i.e., among other things, to try to settle). Efforts to settle are illegal because, by dealing with false federal records, the case now has become a criminal action that plaintiff no longer has the authority to settle.

The district judge committed a criminal act when he signed his 22-MAR-02 decision because his action leaves for posterity false statements in federal records made by him as well as the attorneys.

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[19] *See* App. L, pp. 22a-23a.

The U.S. attorneys committed criminal acts when they signed their 07-AUG-01 motion for summary judgment because their contradictions leave for posterity a number of false statements in federal records.

The CGHQ attorneys, the EEOC administrative judge and plaintiff's attorney committed criminal acts when they entered or otherwise approved of "Administrative Judge Exhibit 1", which contains the Bandy records, as an exhibit at the 1993-94 hearing.

Knowledge.

The judges had knowledge as shown by *Public citizen, supra.* The U.S. attorneys had knowledge as shown by the Government Accounting Office's report GAO/GGD-99-94 dated July 1999. Specifically, on page 14, this report says that the Office of the Attorney General (their boss and one of the defendants in this case) has been working with the National Archives and Records Administration to jointly establish rules and guidelines to ensure that federal agencies make and preserve records that document their essential transactions. The EEOC's administrative judge Arthur Colby had knowledge by his words "system of records," which is the language of the Federal Records Act [20]. The CGHQ attorneys Andrew Pessin and Steven Poulin had knowledge by their promise to judge Colby to keep the confidentiality of the substitutes in their system of records [21]. Finally, plaintiff's attorney had knowledge by her consent that the copy set given to plaintiff was going to be acceptable evidence in a court of law, should the case go to that stage.

Intention.

The attorneys' intention was to hide the Title VII discrimination charge on the basis of Hispanic National

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[20] *See* line 2, para. 4, p. 23a, App. L.

[21] *See* lines 4-6, *id.*

Origin and teach plaintiff a lesson for complaining, at no cost to defendants. For this purpose, they admitted to twelve years of retaliation after the Bullock complaint as if it were based on the age complaint about the Colón's chart above. Their intention shows in that, in this manner, plaintiff would not get anything, as age retaliation provides no statutory remedy. Their intention also shows because, normally, only attorneys know so (plaintiff, who is not an attorney, learned this in the course of this litigation.)

The courts' decisions were intentional (i.e., the result of conscious efforts, not of reflexes,) because they accepted contradictions in the records for review but it is against human nature to contradict oneself.

Judge Colby, in cooperation with CGHQ attorneys and plaintiff's attorney, had the intent when he tried to patch up the destruction of the records by replacing them with illegal substitutes in the CGHQ attorneys' system of records.

Motive.

The motive is plaintiff's complaint against Ms. Bullock, which shows that CGHQ attacked plaintiff with the very same taxpayers' money that was earmarked to help her.

Means.

The judges and defendant's attorneys in this case had the means to violate Title 18 *supra* by having on hand the best resources in the world in terms of personnel, money, computer equipment, time, and expertise at no cost to them (except their share of taxes.) As for plaintiff's attorney, she is a highly paid professional in the specialized field of Employment Discrimination who took plaintiff's savings but worked for the opponent.

Opportunity.

The attorneys and judges in this case had the opportunity when they submitted their motions, approved evidence, or rendered their decisions.

IV. THE QUESTIONS PRESENTED ARE MOST IMPORTANT TO OUR DEMOCRATIC SOCIETY.

In her brief showing cause, plaintiff pointed out to the court of appeals that the false statements in the contradictions by the district judge and the attorneys have the effect of falsifying federal records. In plaintiff's words, "the crimes of falsifying federal records pose greater danger to society than the crimes that are directed to persons because they undermine the very foundation on which this society is built" [22].

CONCLUSION

For all the foregoing reasons, petitioner-plaintiff-appellant urges this Court to grant the requested Petition for Certiorari and to resolve the questions presented in this case in favor of protecting federal records from harm by anyone, irrespective of rank or position, to allow people like petitioner the freedom of voicing a complaint and proving their case.

Respectfully submitted,

DR. CLARA CLARK
Pro se Petitioner
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Washington, DC 20026-4553
(202) 267-0355

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[22] *See* plaintiff's brief to the court of appeals, dated 01-jun-02, pg. 16, paragraph B.13.

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Filed (seal) JUL 10 2002]

No. 02-5155
September Term, 2001
95cv01683

CLARA CLARK,

Appellant,

v.

NORMAN Y. MINETA, SECRETARY,
DEPARTMENT OF TRANSPORTATION,

Appellee.

BEFORE: Ginsburg, *Chief Judge*, and Edwards and Rogers, *Circuit Judges*

ORDER

Upon consideration of this court's order to show cause filed May 16, 2002, the response thereto, and the supplement, it is

ORDERED that the order to show cause be discharged. It is

FURTHER ORDERED that the appeal be dismissed. The order filed March 22, 2002, is not a final decision of the district court appealable under 28 U.S.C. § 1291.

Pursuant to D. C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of

the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam
(Illegible initials)

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed Mar 22 2002]

C.A. No. 95-1683 (EGS)
(seal) [108-1, 2]

DR. CLARA CLARK,

Plaintiff,

v.

RODNEY SLATER, SECRETARY OF TRANSPORTATION, *et al.*,

Defendants.

ORDER

UPON CONSIDERATION of defendants' motion to dismiss, and in the alternative, for summary judgment and the opposition thereto, it is

ORDERED, that the motion is DENIED. Construing plaintiff's pro se complaint liberally, as the Court must do, pursuant to *Richardson v. Kenner,* 193 F.3d 545 (D.C.Cir. 1999), plaintiff's complaint provides "fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson,* 355 U.S.41, 47 (1957). Moreover, a complaint in an employment discrimination lawsuit does not need to allege facts to support a prima facie case of discrimination, as set forth in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973), in order to survive a motion to dismiss. *Swierkiewicz v. Sorema* __S.Ct.__(Feb.26.2002) (2002 WL 261807); *Sparrow v. United Air Lines, Inc.* 216 F.3d 1111, 1114 (D.C.Cir. 2000).

Unmeritorious claims can be weeded out after completion of discovery, not through a heightened pleading standard. An appropriate scheduling order accompanies this Order.

DATE: 3/22/02

/s/ Emmet G. Sullivan (illegible)
United States District Judge

Notice to:

Dr. Clara Clark
P.O. Box 44553
Washington, D.C. 20026

Diane M. Sullivan, Esq.
Assistant United States Attorney
Judiciary Center Building
555 4th Street, N.W. Rm. 10-122
Washington, D.C. 20001

* * * *

SCHEDULING ORDER

[FILED Mar 28 2002]

On page 2, numeral (5) the court ordered:

> "There shall be a further status conference in the courtroom of the undersigned Judge on January 17, 2002, at 10:00 a.m. Counsel must bring full settlement authority to this conference. If settlement is not reached . . ."

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case No. 02-5155

DR. CLARA CLARK,
Plaintiff-appellant

v.

HON. NORMAN MINETA
SECRETARY OF TRANSPORTATION, *et al.*,
Defendant-appellees

On line 6 and subsequent of paragraph "B.1" of plaintiff's statement showing cause, dated 01-JUN-02, plaintiff-appellant pointed out to the court of appeals that, on his order of 22-MAR-02, the district judge affirmed/denied that she was entitled to full relief because defendants had admitted to all her claims in their motion of 07-AUG-01. He affirmed it with the words "construing plaintiff's pro se complaint liberally, as the Court must do (see lines 1-2, paragraph 2, page 3a, appendix B). He denied it with the words "a complaint in an employment discrimination lawsuit does not need to allege facts to support a prima facie case of discrimination" (*see* lines 6-9, paragraph 2, page 3a, appendix B), "since a prima facie is indirect proof but plaintiff appellant had direct evidence through the attorneys' admissions."

APPENDIX D

Excerpts of plaintiff's opposition to summary judgment dated 17-SEP-01 that the district court decided on 22-MAR-02. They point out the contradictions by the attorneys.

1. On paragraph A.1, page 2, plaintiff showed that defendants' attorneys affirmed/denied that plaintiff filed a 1989 Title VII charge against Ms. Bullock.

   They affirmed on lines 4-5, page 4, defendant's memorandum of points and authorities (MOPA), motion dated 07-AUG-01, with the words: "plaintiff's complaint progressed beyond counseling into the filing stage". They denied it on lines 4-5, statement # 5, statement of material facts (SOMF), page 8, with the words: "that complaint did not progress beyond the counseling because it was settled on May 16, 1989. On paragraph A.2, plaintiff pointed out that the denial above is a false statement in a federal record, a crime under Title 18, Section 2071; on paragraph A.3 that Admiral Donnell executed a false settlement; and on paragraph A.4, that it is false that "according to plaintiff that matter was settled" (*see* line 11, defendant's MOPA of 07-AUG-01, page 8.)

Similarly, always pointing to evidence in defendants' 07-AUG-01 MOPA or SOMF, other contradictions as follows:

2. On paragraph A.5 plaintiff showed that they affirmed/denied that the 1989 Title VII charge that plaintiff filed is linked to her allegations of retaliation.

3. On paragraph A.6 plaintiff showed that they affirmed/denied that plaintiff's allegations of retaliation were timely brought to the attention of an EEO counselor.

   They affirmed by saying that the only reprisals alleged by plaintiff at the administrative level were for prior age

discrimination. (*See* lines 18-19, defendants' 07-AUG-01 MOPA page 8, and line 1, page 9.)

4. On paragraph A.8 plaintiff showed that they affirmed/denied that defendants discriminated against plaintiff on the basis of age.

5. On paragraph A.10 plaintiff showed that they affirmed/denied that age was a factor in plaintiff's non-selection for the GM-14 position.

6. On paragraph A.12 plaintiff showed that they affirmed/denied that plaintiff's "fully successful" in 1991 was in fact an unfavorable evaluation.

7. On paragraph A.14 plaintiff showed that they affirmed/denied that plaintiff's unfavorable evaluation was in retaliation for her 1989 Title VII activity.

8. On paragraph A.16 plaintiff showed that they affirmed/denied that plaintiff's supervisors harassed her with unnecessary deadlines in retaliation for plaintiff's Title VII activity in 1989.

9. On paragraph A.17 plaintiff showed that they affirmed/denied that plaintiff's "fully successful" evaluation in 1992 was in fact an unfavorable evaluation.

10. On paragraph A.19 plaintiff showed that they affirmed/denied that plaintiff's unfavorable 1992 evaluation was in retaliation for her 1989 Title VII activity.

11. On paragraph A.21 plaintiff showed that they affirmed/denied that defendants reprimanded plaintiff with their 1992 "letter of counseling".

12. On paragraph A.22 plaintiff showed that they affirmed/denied that defendants' 1992 letter of reprimand to plaintiff was in retaliation for her Title VII activity in 1989.

13. On paragraph A.23 plaintiff showed that they affirmed/denied that defendants discriminated against plaintiff in violation of the Rehabilitation Act of 1973.

14. On paragraph A.24 plaintiff showed that they affirmed/denied that defendants intentionally discriminated against plaintiff on the basis of sex.

15. On paragraph A.25 plaintiff showed that they affirmed/denied that defendants' discrimination on the basis of sex was in retaliation for her Title VII activity in 1989.

16. On paragraph A.27 plaintiff showed that they affirmed/denied that coworker intentionally discriminated against plaintiff on the basis of sex.

17. On paragraph A.28 plaintiff showed that they affirmed/denied that coworkers sexually harassed plaintiff.

18. On paragraph A.29 plaintiff showed that they affirmed/denied that agency attorneys illegally discriminated and retaliated against plaintiff through harassment (assault).

APPENDIX E

Excerpts of exhibit 14 of plaintiff's opposition to summary judgment dated 29-JAN-96. They point to chart showing Ms. Colón being promoted over plaintiff by supervisor Cope without competition.

This exhibit 14 is from plaintiff's complaint dated 22-OCT-90 and it is about exhibit 4 of Investigative Report 91-32.

MIM-1 Policies and Procedures Branch

Grade	Series	BCN/PC	Duty/tour	Person	Comments
GM-14	0334	570058PMIM-1	Branch Chief	Colón	
GS-13	0334	570058PMP4	Comp. Specialist	Colón	Upgrade billet
GS-13	0334	570057PMIM-1	Duty	Clark	
GS-13	0334	570057P MP4	Comp. Specialist	Clark	

At the bottom, there is a handwritten note by plaintiff that says "Presented on Oct 18 * at 2:00 p.m., room 6319, US Coast Guard Headquarters, before a group of about 30 persons".

* Note: the year was necessarily 1989 because plaintiff had not complained in 1988, and 1990 would have been too soon.

APPENDIX F

Below is copy of complainant's exhibit 6 at the 1993-94 hearing. It was submitted as exhibit 24 in plaintiff's opposition to summary judgment dated 29-JAN-96. It shows that the Colón complaint about the chart was settled informally.

To: Mr. John Coakley, EEO Counselor
DOT Nassiff Bldg.
Room 10300, P-20

From: Clara Clark, Computer Specialist (Signed)
Coast Guard HQ
Room 1206, G-MP-4

Date: April 11, 1990

Subject: My EEO complaint against LCDR Brad Balch and CDR Gregg Cope.

Thank you for representing me in the above referenced matter, and for obtaining the resolution to my complaint. After talking to CAPT Lindak and accepting his promise of equal opportunity for me in the Coast Guard, I can already see effective results, which make me feel very satisfied with the resolution. For instance, I am in the process of developing a plan with my supervisor by which I will be exposed to managerial and administrative tasks to build the basis to compete for promotions. I also notice the doors of communication open now to me, and the opportunity to be heard and to have my input on job-related matters considered.

I also acknowledge receiving from you the final interview in this matter, during our phone conversation earlier today. I feel that you demonstrated a high degree of professionalism in this task, and that you worked very effectively towards a satisfactory outcome. Thanks again for a job well done.

APPENDIX G

Excerpts of plaintiff's opposition to summary judgment dated 19-Jul-99. They point to evidence of age discrimination for non-promotion.

Discriminatory incident. On numeral B.2.1, pp. 67-68, plaintiff's opposition to summary judgment dated 19-JUL-99, plaintiff pointed out that on or about July 1990, supervisor William Chang reported to work as Deputy Chief of the G-MIM Division (*see* Exhibit 30, plaintiff's response of 29-JAN-96.) He, who was an expert in computers (T. pp. 834-35), had a technical bias in that he preferred technical vs. non-technical staff (T. p. 905). He also had an age bias, as reported by Mr. Danzik, the EEO counselor, of supervisor Chang saying: Ms. Schremp gets good performance out of all her employees except for Ms. Clark and Ms. Allen, the two employees over forty" (pp. 11-12, exhibit 3, investigative report 91-62). He showed his age bias when he designed the quality ranking factors for the GM-14 vacancy announcement, and tailored QRF #2 to the work that Ms. Colón was doing to remove the advantage that plaintiff (49 years old, a Hispanic female GS-13 computer specialist) had over Ms. Colón (32 years old, also a Hispanic female GS-13 computer specialist) for being older. How much advantage supervisor Chang gave Ms. Colón to remove the age differential? Until they were equal (see defendants' memorandum dated 12-APR-99, footnote 7, page 30.)

Supervisor Chang's age bias dominated over his technical bias. For example, he referred to the selecting official two persons: a technical expert (Mr. Spangerberg) and young Ms. Colón even though he admitted that Ms. Colón was not technical (T. p. 903) and that plaintiff was technical (T. pp. 913-15). On 04-SEP-90, the selecting official selected Ms. Colón to fill the vacancy because he preferred a non-technical person and a "known quantity". (T. p. 1148). Subsequently, plaintiff, who competed for the position, complained of age

discrimination under the Age Discrimination in Employment Act (ADEA).

But for age discrimination. On page 78, plaintiff showed that but for supervisor Chang's age discrimination against her, she would have been selected. If plaintiff had been 32 years old, supervisor Chang, following his technical bias, would have ranked plaintiff over Ms. Colón, and would have referred two technicians to the selecting official. In turn, the selecting official would have selected plaintiff for being the "known quantity" (defendants' statement # 40, dated 12-APR-99.)

Intention. On p. 4, plaintiff's memorandum of motion dated 22-NOV-99, plaintiff showed intention by CGHQ to discriminate on the basis of age, because the Policies and Procedures Branch subject matter of the promotion was not needed by the Coast Guard. This is because, Ms. Colón testified at the Ms. Ollie Jones' hearing (to keep a subordinate from proving her abusing leave) that, as acting chief of the Policies and Procedures Branch, her supervisors would tear up her requests for leave because they knew that she had been working long hours and would not be compensated for that. But, in Ms. Colón's words, whatever she was doing, it was not working on Policies and Procedures. If the Branch had been needed at all, Ms. Colón's supervisors would have noticed that she was not doing any work related to Policies and Procedures.

APPENDIX H

Excerpts of plaintiff's opposition to summary judgment dated 19-JUL-99. They point to evidence of illegal discrimination on the basis of physical handicap, sex, harassment (assault) and sexual harassment.)

1. Handicap discrimination. On numeral 4, pp. 8-12, plaintiff's motion of 16-OCT-99, plaintiff complained that her supervisor Keith Grant discriminated against her in violation of the Rehabilitation Act of 1973, as amended, 29 U.S.C.A. sections 706, 791-94 when on 06-JUN-94, he gave her a low rating (proficient or average) for her 1993-94 performance evaluation (see exhibit 13 of this motion.) Although low, this rating shows that plaintiff was meeting essential duties and he also stated so to the EEO investigator (see exhibit 15 of this motion.) He had signed plaintiff's application for disability retirement on 13-AUG-93 due to stomach problems (esophagitis with a constant feeling of nausea) that substantially limit her ability to work. (See exhibit 23, page 5, plaintiff's response of 26-JAN-96.) His reason for the low rating was that "plaintiff missed deadlines. (See exhibit 15 this motion). Per e-mail dated 31-AUG-93, he reported to his supervisor Dave Wilder being late in several tasks of his MMLD project. (See exhibit 16 this motion). Per e-mail dated 08-FEB-94, he received an award for his work in the MMLD project. Supervisor Grant was not a handicap person since he was active military. Plaintiff's work was part of the MMLD project. Plaintiff's critical job elements did not require meeting deadlines due to the changing nature of system's development. Supervisor Grant had commended her work during the evaluation period, leading to believe that the rating would be higher than average (see exhibit 23 this motion.)

But for her handicap, plaintiff would not have been frequently absent from work on sick leave and would not have missed deadlines. At the beginning of her handicap (1993), she did not know how to control it but later, with medication prescribed by her physician, Dr. Malhotra, she controls her condition. (*see* exhibit 13 of plaintiff's response of 19-JUL-99). Plaintiff was damaged in that she did not receive the cash award that employees with higher-than-average evaluations received.

2. Sex discrimination. On numeral B.41, page 105, plaintiff's opposition to summary judgment dated 19-JUL-99, plaintiff, a female, showed that on or about 16-JUN-95, Scott Bair, supervisor over computer personnel, deleted her title of "Dr." from the CGHQ computer system (see exhibit 7, plaintiff's 25-FEB-97 motion). At the same time, the title of Dr. Harry Hantzes, a male, was still in the computer (see exhibit 8, plaintiff's 25-FEB-97 motion). Plaintiff filed a complaint of sex discrimination against him under Title VII of the Civil Rights Act. But for Mr. Bair's discrimination, plaintiff's co-workers would not have thought that she was doing wrong things with the computer, and would have worked with her as a team. Unlike other periods, plaintiff did not receive team commendations from 1995, when her title was deleted, until 1998, when it was restored.

3. Harassment (assault). On pp. 2-7, statement of material facts, plaintiff's motion of 10-NOV-99, she stated that Warren Dixon, Esq., a CGHQ representative at the administrative level who handled the handicap discrimination complaint above, made a motion for summary judgment on 05-FEB-98 to EEOC's administrative judge Kathyrn Brown. Plaintiff opposed his motion on the grounds that it was made in bad faith because (a) he asked the judge to infer that plaintiff was a trouble maker because she "had made too many EEO

complaints"; (b) he was complaining against plaintiff on the basis what he predicted could happen in the future (not a fact) that plaintiff was going to complaint against him to his Bar; and (c) he complained that plaintiff had complained against every supervisor but she had not complained against at least three of them.

The harassment happened as described on pp. 2-5, plaintiff's memorandum, this motion, as follows: on March 18, 1998, while riding with her husband to work, plaintiff read Mr. Dixon's letter in which she was notified that attorney Richard Kelly (Mr. Dixon's supervisor) had assigned the case to Mr. Dixon and that he was going to depose her "from day to day until completed". Plaintiff experienced tremendous anxiety, as she knew that Mr. Dixon was angry at her for the bad image that she had conveyed of him to the administrative judge in the previous complaint. The first thing that she remembered was how supervisors Ervin, Chang and Schremp used to yell at her for hours forcing her to confess what she had not done: spied on Ms. Schremp and finding her leave abuse for about six thousand dollars. Plaintiff felt that Mr. Dixon's request for deposition was unreasonable because on November 1993 she was deposed on 10 complaints and that only took one day. Plaintiff felt that Mr. Dixon was going to have the final word to what constitutes completion and that was going to be until she confesses making "reckless complaints against the agency".

Plaintiff broke her leg as she got off the car that morning. This required surgery. Plaintiff no longer can climb stairs and her knee hurts with cold weather. Mr. Dixon assaulted plaintiff when he conducted the deposition as planned, which he knew was no different than she had told him that she feared snakes and would force her in a room with snakes.

4. Sexual Harassment discrimination. On pp. 2-3, statement of material facts, plaintiff's motion of 22-NOV-99, plaintiff complained to Ms. Linda Synowcznski, and EEO counselor with the CGHQ, that on 08-AUG-96 she heard laughs of ridicule against Hispanics as coworkers William Butler and Carmen Colón showed other coworkers some photographs that he took at the D.C. latino festival the previous weekend. On exhibit 6, this motion, the agency submitted the photographs alleging that there was no sexual harassment because the women were fully clothed. On exhibit 7 of this motion, plaintiff rebutted their argument by explaining that when she looked at the photographs furnished by the agency, these confirmed the ridicule that she heard because they show coworker Butler embracing different women like exhibiting them for sale very similar to TV adds that display people holding groceries in their arms while offering them for sale. Plaintiff complained that, by association, her coworkers would conclude that she is for sale too.

APPENDIX I

Excerpts of agency's motion to dismiss dated 15-NOV-93. It points to Ms. Bullock alleging that plaintiff said strong words to her.

On page 36 of plaintiff's opposition to summary judgment dated 19-JUL-99, she points to a motion that the agency attorneys made on 15-NOV-93 to dismiss her complaints. (See T. Complainant's exhibit 25, attachment 5,) where Ms. Bullock testified that plaintiff said strong words to her in a memorandum:

5. Shortly after this second meeting between Ms. Clark and myself, I [Ms. Bullock] received a strongly worded memorandum from Ms. Clark sent via her first line supervisor . . .

APPENDIX J

Excerpts of plaintiff's opposition to summary judgment dated 19-JUL-99. They point to plaintiff's words complaining that Ms. Bullock did not help her regarding English problems.

On page 24 of plaintiff's opposition to summary judgment dated 19-JUL-99, it says that in her deposition of 05-NOV-93 (T. Agency's exhibit 24, pp. 26-27), plaintiff testified: "I [plaintiff] also felt that she [Ms. Bullock] discriminated against me on the basis of national origin because the words that she claimed were strong or she—that's what she stated, that they were strong words from me, that those words—I said them in English, but my thoughts and my mental processes, when I talk, are in Spanish and will always be. That is my native language. So it was her [Ms. Bullock] job and duty to paraphrase to me, to explain if I said anything wrong. And in addition to that, none of the people who saw the memo—the secretary or the editor of the three officers—ever said it had any strong words. They never said that to me.

APPENDIX K

Excerpts, from the transcript, of the 1993-94 hearing. They point to the evidence that shows that EEO counselor Benjamin Bandy and supervisor Williams Fels destroyed plaintiff's records

On page 25 of plaintiff's opposition to summary judgment dated 19-JUL-99, she points to exhibit 12, plaintiff's 29-JAN-96 response to other summary judgment, to show that her documents were destroyed.

Negotiated Settlement Agreement

1. In exchange for the promises made by the Deputy Chief of Staff, U.S. Coast Guard, in paragraph 2 of this agreement, the complainant, Clara Clark, agrees to not institute lawsuit or other action under Title VII of the Civil Rights Act of 1964, as amended, under United States Constitution, or under any other federal or state law or regulation, and the complainant hereby withdraws her complaint.

2. In exchange for the promises of the complainant contained in paragraph 1 of this agreement, the Agency agrees to remove all copies of correspondence relating to the MEMORANDUM OF UNDERSTANDING REGARDING THE APPOINTMENT OF MRS. CLARA CLARK AS HISPANIC EMPLOYMENT PROGRAM MANAGER AT HEADQUARTERS from official and unofficial files and will not be used as a basis for any personnel evaluations.

* * * *

On page 36 of plaintiff's opposition to summary judgment dated 19-JUL-99, she points to a motion that the agency attorneys made on 15-NOV-93 to dismiss her complaints. (See T. Complainant's exhibit 25, attachment 5,) where Ms. Bullock testified that the records were going to be destroyed:

5. . . . I [Ms. Bullock] do not clearly recall the contents of either Ms. Clark's memorandum or my memorandum given the lapse of time since these events and because all documents were to be destroyed as a result of the settlement agreement.

* * * *

On page 753, T., lines 1-11, when questioned by Judge Colby, Admiral Donnell testified as follows:

THE WITNESS: Well, we did not who had what copies of what. The important thing here was, from the standpoint of the settlement, that all copies be removed from her official records . . . I don't think that we talked about the copies that Dr. Clark had on her own or that Norma Bullock had or anybody else, although I think that they would have—

JUDGE COLBY: They all went.

THE WITNESS: They all went.

* * * *

On page 798, T., former EEO counselor testified on direct while questioned by LT Poulin as attorney for the CGHQ as follows:

Q: Would it be fair to say that most of this issue, or the resolution of this issue, was handled with Commander Fels? (See lines 4-6).

A: I would think so. (See line 7)

Q: I think you testified on direct that he was the one that went with you to insure that the memos were destroyed? (See lines 15-17).

A: Yes, that's correct. (See line 18).

On page 804 on cross examination by Ms. Weiss, former counselor Bandy testified:

Q: Did Captain Cope see a copy of the settlement agreement? (See lines 17-18).

A: . . . I left the meeting with Captain Donnell and went to their offices to assure that the information was purged.

APPENDIX L

Excerpts, from the transcript, of the 1993-94 hearing They point to the evidence that shows how the destroyed records "reappeared".

On pp. 810-813, Judge Colby stated after the testimony of former counselor Bandy:

I have been presented with the series of documents, which reflect the incident about which the complainant engaged in EEO activity in April and May 1989. These documents are documents that an informal resolution of May 1989 required to have been destroyed. These documents were obtained from the EEO Counselor, who kept a separate series of documents.

I have marked these documents as Administrative Judge's Exhibit Number 1. The documents include an undated memorandum to the complainant regarding an offer of appointment to the position of Hispanic Employment Program Manager, and there is supporting documentation such as a proposed amendment to the complainant's performance standards, and a Form 52 requesting that the performance standards be amended.

Following that is a memorandum dated March 22nd, 1989, through which the complainant officially declined that offer.

There is then a memorandum dated March 30, 1989, from Ms. Bullock, the director of the Office of Civil Rights to the complainant regarding her declination memorandum.

And then there is a memorandum from Commander Cope regarding a copy of Ms. Bullock's memorandum.

And finally, there is another memorandum from Ms. Clark to Ms. Bullock, dated April 21st, regarding Ms. Bullock's memorandum to Ms. Clark.

Now, while we were off the record, I requested the parties here to keep these documents in their private files, and that these documents should not be made part of any official government files other than the files regarding this EEO hearing. You are looking at me in a querulous way, Ms. Weiss.

MS. WEISS: Well, ultimately, if this goes to court—

JUDGE COLBY: That's a different matter . . . The problem that I have with introducing these documents into the record is that all official Coast Guard copies of these documents have been destroyed, pursuant to the settlement agreement that was reached in May of 1989. These documents were obtained from the EEO Counselor, who was an employee of the Department of Transportation, not of the Coast Guard.

The concern is that these documents were destroyed and eliminated from the Coast Guard's system of records, pursuant to the desires of Dr. Clark that they not, in any way, have an effect on her in her performance of her official duties in 1989 and thereafter.

By introducing them into the record now, I don't want them to become a part of any Coast Guard system of records that somehow could have any effect on Dr. Clark either. And I have the agreement of the agency's representatives that these will stay in their official legal files only.

MR. PESSIN: Right.

LT POULIN: Yes, sir.

JUDGE COLBY: And, of course, if this matter does end up going to court, then, of course, the complainant now has copies of them again. And since the destruction of the records was for her protection, she could decide whether or not she wants to submit such records in any court case . . .